

## **SUMMARY OF FY 2007 QUALITY REVIEWS**

### **A. UNFAIR LABOR PRACTICE CASES**

#### **Affidavits Problems, Lack Of Corroboration and Scope of Investigation**

- ✓ The Board affidavit of the 8(a)(3) discriminatee failed to cover the events leading to his discharge, but instead incorporated a personal statement written by the discriminatee about these events.
- ✓ A Region failed to follow-up on a clear 8(a)(1) threat admitted in a statement from the employer.
- ✓ In its affidavits, the Region failed to identify or reference exhibits.
- ✓ A Region failed to gather evidence to support the basis for asserting discretionary jurisdiction.
- ✓ When taking phone affidavits agent used an incorrect attestation.
- ✓ Board agent failed to seek evidence regarding disparate treatment allegation and 8(a)(1) allegations regarding threats and interrogation. Agent also failed to seek to interview employee alleged to have overheard relevant statement from alleged discriminatee.
- ✓ In complaint case Region did not investigate appropriateness of electronic notice posting.
- ✓ In 8(a)(3) discharge case, the affidavit obtained from the alleged discriminatee did not address the issue of anti-union animus. Subsequently, FIR stated that there was an absence of evidence of anti-union animus.
- ✓ In case involving allegation of discharge because of protected concerted activity, affidavit obtained from alleged discriminatee failed to address whether he had spoken to other employees about his workplace concerns.
- ✓ In case involving allegation of discharge because of protected concerted activity, the alleged discriminatee's affidavit was unclear about whether her complaints were about her individual pay rate or encompassed the pay rate of employees generally.
- ✓ In case involving allegations that employees were discharged in violation of Sec. 8(a)(3), Board agent failed to take affidavits.
- ✓ Affidavit lacked certain necessary basic details.
- ✓ Several affidavits lacked sufficient details to allow a determination about whether unlawful threats had been made.
- ✓ In deferred case involving Sec. 8(a)(1) discharge allegation, initial affidavit lacked certain basic information.

#### **Problems in Agenda Minutes and FIRs**

- ✓ FIR misstated the testimony of an employee witness regarding a solicitation of grievance allegation.
- ✓ Region did not identify as meritorious an 8(a)(1) allegation concerning a rule in an employee handbook that prohibited employees from discussing personal compensation with others.
- ✓ FIR did not include a discussion of evidence provided by material witness in duty of fair rep case.

**Docket Problems**

- ✓ The Region's docket letters failed to contain the Improving Access to Services for Persons with Limited English Proficiency language as required by OM 03-69.

**Timeliness of Investigation and Unreasonable Deadlines**

- ✓ A Region took two months to take the lead affidavit in Category 3 refusal to hire case.
- ✓ A Region gave a charged party an unreasonably short deadline when it set one and two days respectively to respond to two written requests for information needed to respond to issues raised by the charge.
- ✓ Board agent established unreasonably short deadline for submission of Charged Party's evidence.
- ✓ In several cases Board agents did not initiate investigation in prompt manner.

**EAJA Letters**

- ✓ An EAJA letter sent to the respondent quoted extensively from affidavits taken from charging party witnesses (3 Regions). The inappropriate practice of quoting from affidavits had previously been raised with one of the Regions in a prior quality review.
- ✓ A majority of the EAJA letters issued by a Region and reviewed during the quality review process failed to contain a brief description of the allegations of the charge or to outline the documents and witnesses that the Board agent was requesting in order to investigate the issues raised by the allegations of the charge.
- ✓ Some EAJA letters lacked requisite language about what constitutes full cooperation (2 Regions).
- ✓ Letter to Charged Party Union did not include a request for affidavits from witnesses to be presented by the Union.
- ✓ Several of Region's files lacked EAJA letters.
- ✓ Requests that charged parties present witnesses for Board-prepared affidavits not documented in case files.
- ✓ Board agent's initial letter to Charged Party seeking evidence contained language that suggested a predisposition towards finding a violation.

**Collyer Follow-Up**

- ✓ Regions delayed three months in dismissing case after letter requesting information warned that case would be dismissed for failure to respond by a date certain (2 Regions).
- ✓ Regions failed to follow-up on deferred cases in 90 day intervals for periods from four to nine months (4 Regions).
- ✓ A Region took no action on a *Collyer* deferral case when the charging party twice failed to respond to a request for information.

**Complaint Inadequacies**

- ✓ A Region failed to follow the better practice of including the full corporate name of the respondent in the complaint.

**Postponement of Trials**

- ✓ A Region postponed a ULP hearing indefinitely based on the filing of a bankruptcy petition. However, after the bankruptcy petition was dismissed in 2002, the Region took little action on processing the case until a withdrawal request was approved in 2006. The file contained no explanation for this substantial lapse in case processing.

**Wright Line Defense Issues**

- ✓ A Region failed to obtain disparate treatment evidence needed to evaluate the Employer's asserted *Wright Line* defense.
- ✓ Region failed to ask a Respondent for documentation to support its *Wright Line* defense.

**File Documentation Issues**

- ✓ Several files failed to contain file notes on the processing of a case and the terms of a settlement that were created electronically but were not printed out and placed in the file.
- ✓ A file was missing the FIR or other decisional documents and another file failed to contain the informal settlement agreement and any compliance information with respect to that settlement.
- ✓ A case file failed to contain copies of affidavits because they had been pulled from the file to be used in a more recently filed case and the file contained no note indicating where the affidavits could be found.
- ✓ A case file failed to contain any file documentation other than the docketing letters and a letter approving the withdrawal of the charge.
- ✓ File failed to contain any follow-up documentation with respect to the ARD's instruction to the Board agent to contact the union about making additional witnesses available for affidavits.
- ✓ In case deferred per *Collyer*, file lacked documentation of Employer assurances.
- ✓ In non-merit case, file did not document that Charging Party was contacted to determine if the charge was to be withdrawn or dismissed and, if dismissed, if a long-form or short-form letter should issue (2 Regions).
- ✓ In adjusted case, file lacked documentation about the acceptability of the confidentiality clause negotiated between the parties.
- ✓ In case adjusted post complaint, file did not contain any backpay computations, making it impossible to determine if amount received constituted full backpay.
- ✓ Several files failed to include IO contact notes.
- ✓ Some files lacked documentation about contact with witnesses and parties.

**Settlement Agreement Issues**

- ✓ Non-Board settlement that was approved by the Region included a very broad confidentiality restriction limiting disclosure of the terms of the settlement to "anyone". This provision is not consistent with GC policy as set forth in OM 07-27.

- ✓ Notice provision incorrectly identified employee who had been recipient of unlawful statement made by Respondent Union.

### **CATS Issues**

- ✓ A Region had several potential 10(j) cases in which the notification to respondent that the Region was seriously considering 10(j) relief as well as the Region's 10(j) decision were not recorded in CATS.

### **Procedural Defects**

- ✓ A Region approved a withdrawal of a charge based on a non-board settlement while the matter was pending before the Board on review of exceptions to the ALJ's decision. When the Board subsequently issued its decision in the case, the Region filed a motion with the Board to vacate its decision without seeking approval from Operations-Management on the appropriate steps to take to correct this critical casehandling mistake.

## **B. 10(j) CASES**

### **Obtaining Just and Proper Evidence**

- ✓ The Region failed to discuss with the charging party that the initial evidence received from the respondent did not appear to support the need for 10(j) relief and the Region failed to inform the charging party of the type of evidence that was needed to support its request for 10(j) relief.
- ✓ In case presenting 10(j) potential, there was no investigation of just and proper issues. (2 Regions)
- ✓ 10(j) issue not considered until after completion of initial agenda (2 Regions).

### **Failure to Consider Need for 10(j) Relief in Appropriate Cases**

- ✓ A Region concluded that 10(j) relief was not appropriate early in the processing of a case because the discharge was "isolated" and did not present the risk of remedial failure without real support for these conclusions.
- ✓ A Region's conclusion that an 8(a)(3) charge had no inherently chilling effect was not well supported and warranted closer review or consultations with the Injunction Litigation Branch.

## **C. REPRESENTATION CASES**

### **Case Processing Issues**

- ✓ Marked ballots remained in the file after a case was closed.
- ✓ Letters prepared by Region did not conform to factual circumstances of election and file lacked copies of letters sent to voters in mail ballot case.
- ✓ On several occasions, Board agents did not obtain the parties' initials to confirm verbal agreements to modify representation case documents.
- ✓ Region could have made greater use of legal writing principles in drafting decision.

- ✓ In several files notes were not readily apparent or organized, making it difficult to determine what issues had been discussed with parties prior to obtaining election agreements.
- ✓ In post-election objections case consolidated with ULP proceeding, a file lacked a number of essential documents, such as copy of order approving request to withdraw charge and objections.
- ✓ In case involving multiple-site election, file did not show which Board agent was responsible for conducting election at which location.
- ✓ In case raising an issue about whether Dept. of the Army would allow an election on a military base, burden improperly placed on Petitioner to obtain the Army's agreement.

#### **Proper Role of Hearing Officer**

- ✓ Hearing officer was too lenient in applying rules of evidence, resulting in too many leading questions on key issues.

#### **Showing of Interest Issues**

- ✓ A Region failed to complete form 4069 showing that a check of the showing of interest was completed (3 Regions) and in another case the showing of interest form was not signed by the Board agent.
- ✓ The showing of interest was not returned to the petitioner after the case was closed. (4 Regions).
- ✓ Of 7 representation case files examined for Region, 4 files contained copies of cards or lists submitted for showing of interest.
- ✓ Showing of interest materials remained in closed file.

#### **Tally of Ballots and Certification**

- ✓ A Region issued a post-election Hearing Officer's Report that incorrectly recommended that a Certification of Results should issue even though a majority of valid ballots had been cast in favor of representation.
- ✓ A Region mistakenly issued a Certification of Representative and Notice of Bargaining Obligation after an election in which a majority of votes was cast against representation.

### **D. COMPLIANCE CASES**

#### **Settlement Problems**

- ✓ An informal settlement agreement provided for payment of backpay minus statutory deductions; however, the employer submitted a check that withheld only FICA monies and made no deductions for federal and state taxes. Despite the specific terms of the settlement, the Region transmitted the check to the discriminatee.

#### **File Documentation Problems**

- ✓ Compliance file failed to contain copies of the backpay checks distributed to the discriminatees.

- ✓ Closed Case Report incorrectly showed total of backpay as \$175,000 instead of correct amount of \$191,000.

### **Case Processing Issues**

- ✓ The closing of an informal settlement agreement was substantially delayed even though the Region had received proof of the posting and full compliance with the terms of the settlement.
- ✓ A compliance case showed large gaps of time in seeking to secure compliance with a Board order.
- ✓ Upon learning of a respondent's chapter 7 bankruptcy filing, the Region delayed in taking appropriate steps to protect the Agency's potential backpay claim and ultimately was compelled to close the case without compliance.
- ✓ A compliance case contained unexplained gaps in the computation of backpay and communications with the parties.
- ✓ A Region took more than two months after sending its initial compliance demand letter to obtain written offers of reinstatement for the discriminatees.
- ✓ A Region closed a compliance case two months before obtaining a copy of the backpay check that the respondent had sent directly to the discriminatees.
- ✓ After court order enforcing Board decision in part, Region had long delay before it sent respondent notices for posting.
- ✓ Region had long periods of inactivity in processing compliance case.
- ✓ Compliance Officer failed to bring significant compliance problems to the attention of Regional management.
- ✓ After compliance actions completed, Region delayed 5 months before closing case.
- ✓ Region suspended compliance efforts when respondent filed Petition for Cert with the Supreme Court. However, under Compliance Manual Sec. 10614, in the absence of the issuance of a Stay, the Region should have continued to pursue compliance efforts.
- ✓ Region sent compliance materials to principal of respondent, but not attorney, resulting in significant delay in achieving compliance.
- ✓ In case where Region accepted 60% settlement of backpay claim, file lacked explanation of basis for accepting reduced amount and also lacked documentation of approval by Operations-Management.
- ✓ Backpay stipulation did not specifically require respondent employer to make statutory withholdings, nor did it identify amounts allocated to backpay and interest.